

AMENDED IN SENATE AUGUST 18, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Skinner

(Coauthors: Assembly Members Atkins, Bonta, Brown, Buchanan, Chávez, Eggman, Fong, Garcia, Gonzalez, Melendez, Olsen, Quirk, Stone, Ting, Waldron, and Wieckowski)

(Coauthors: Senators Corbett, Hill, Lieu, Vidak, and Wyland)

January 15, 2014

An act to amend Section 680 of the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Skinner. DNA evidence.

Existing law establishes the “Sexual Assault Victims’ DNA Bill of Rights,” which, among other things, encourages a law enforcement agency assigned to investigate specified sexual assault offenses to perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner to assure the longest possible statute of limitations. Existing law also requires a law enforcement agency to inform victims of certain sexual assault offenses, if the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill instead would, with respect to specific sex offenses, encourage a law enforcement agency in whose jurisdiction the sexual assault offense occurred to submit sexual assault forensic evidence received by the agency on or after January 1, 2016, to the crime lab

within ~~40~~ 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program, as defined, is in place to submit forensic evidence collected from the victim of a sexual assault to the crime lab within 5 days after the evidence is obtained from the victim. The bill would also encourage the crime lab, with respect to sexual assault forensic evidence received by the lab on or after January 1, 2016, to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System as soon as practically possible, but no later than ~~60~~ 120 days after initially receiving the evidence, or to transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, as specified. The bill would also revise the provisions requiring a law enforcement agency to inform victims of certain sexual assault offenses, to make the requirement applicable without regard to whether the identity of the perpetrator is in issue, if the law enforcement agency does not analyze DNA evidence, and to require those entities to notify the victims within 6 months of the time limits established under existing law. By imposing a higher level of service on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 680 of the Penal Code is amended to
- 2 read:
- 3 680. (a) This section shall be known as and may be cited as
- 4 the “Sexual Assault Victims’ DNA Bill of Rights.”
- 5 (b) The Legislature finds and declares all of the following:
- 6 (1) Deoxyribonucleic acid (DNA) and forensic identification
- 7 analysis is a powerful law enforcement tool for identifying and
- 8 prosecuting sexual assault offenders.

1 (2) *Existing law requires an adult arrested for or charged with*
2 *a felony and a juvenile adjudicated for a felony to submit DNA*
3 *samples as a result of that arrest, charge, or adjudication.*

4 ~~(2)~~

5 (3) Victims of sexual assaults have a strong interest in the
6 investigation and prosecution of their cases.

7 ~~(3)~~

8 (4) Law enforcement agencies have an obligation to victims of
9 sexual assaults in the proper handling, retention, and timely DNA
10 testing of rape kit evidence or other crime scene evidence and to
11 be responsive to victims concerning the developments of forensic
12 testing and the investigation of their cases.

13 ~~(4)~~

14 (5) The growth of the Department of Justice's Cal-DNA
15 databank and the national databank through the Combined DNA
16 Index System (CODIS) makes it possible for many sexual assault
17 perpetrators to be identified after their first offense, provided that
18 rape kit evidence is analyzed in a timely manner.

19 ~~(5)~~

20 (6) Timely DNA analysis of rape kit evidence is a core public
21 safety issue affecting men, women, and children in the State of
22 California. It is the intent of the Legislature, in order to further
23 public safety, to encourage DNA analysis of rape kit evidence
24 within the time limits imposed by subparagraphs (A) and (B) of
25 paragraph (1) of subdivision (g) of Section 803.

26 ~~(6)~~

27 (7) In order to ensure that sexual assault forensic evidence is
28 analyzed within the two-year timeframe required by subparagraphs
29 (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and
30 to ensure the longest possible statute of limitations for sex offenses,
31 including sex offenses designated pursuant to those subparagraphs,
32 the following should occur:

33 (A) A law enforcement agency in whose jurisdiction a sex
34 offense specified in Section 261, 261.5, 262, 286, 288a, or 289
35 ~~occurred~~ *occurred*, should do one of the following for any sexual
36 assault forensic evidence received by the law enforcement agency
37 on or after January 1, 2016:

38 (i) Submit sexual assault forensic evidence to the crime lab
39 within ~~10~~ 20 days after it is booked into evidence.

(ii) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

(B) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(i) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than ~~60~~ 120 days after initially receiving the evidence.

(ii) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

(C) This subdivision does not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. A lab is considered to be in compliance with the guidelines of this section when representative samples of the evidence are processed by the lab in an effort to detect *the* foreign DNA of the perpetrator.

(D) This section does not require a DNA profile to be uploaded into CODIS if the DNA profile does not meet federal guidelines regarding the uploading of DNA profiles into CODIS.

~~(D)~~

(E) For purposes of this section, a “rapid turnaround DNA program” is a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.

~~(7)~~

1 (8) For the purpose of this section, “law enforcement” means
2 the law enforcement agency with the primary responsibility for
3 investigating an alleged sexual assault.

4 (c) (1) Upon the request of a sexual assault ~~victim~~ *victim*, the
5 law enforcement agency investigating a violation of Section 261,
6 261.5, 262, 286, 288a, or 289 may inform the victim of the status
7 of the DNA testing of the rape kit evidence or other crime scene
8 evidence from the victim’s case. The law enforcement agency
9 may, at its discretion, require that the victim’s request be in writing.
10 The law enforcement agency may respond to the victim’s request
11 with either an oral or written communication, or by ~~electronic mail~~,
12 *email*, if an ~~electronic mail~~ *email* address is available. Nothing in
13 this subdivision requires that the law enforcement agency
14 communicate with the victim or the victim’s designee regarding
15 the status of DNA testing absent a specific request from the victim
16 or the victim’s designee.

17 (2) Subject to the commitment of sufficient resources to respond
18 to requests for information, sexual assault victims have the
19 following rights:

20 (A) The right to be informed whether or not a DNA profile of
21 the assailant was obtained from the testing of the rape kit evidence
22 or other crime scene evidence from their case.

23 (B) The right to be informed whether or not the DNA profile
24 of the assailant developed from the rape kit evidence or other crime
25 scene evidence has been entered into the Department of Justice
26 Data Bank of case evidence.

27 (C) The right to be informed whether or not there is a match
28 between the DNA profile of the assailant developed from the rape
29 kit evidence or other crime scene evidence and a DNA profile
30 contained in the Department of Justice Convicted Offender DNA
31 Data Base, provided that disclosure would not impede or
32 compromise an ongoing investigation.

33 (3) This subdivision is intended to encourage law enforcement
34 agencies to notify victims of information which is in their
35 possession. It is not intended to affect the manner of or frequency
36 with which the Department of Justice provides this information to
37 law enforcement agencies.

38 (d) If the law enforcement agency does not analyze DNA
39 evidence within six months prior to the time limits established by
40 subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of

1 Section 803, a victim of a sexual assault offense specified in
2 Section 261, 261.5, 262, 286, 288a, or 289 shall be informed, either
3 orally or in writing, of that fact by the law enforcement agency.

4 (e) If the law enforcement agency intends to destroy or dispose
5 of rape kit evidence or other crime scene evidence from an
6 unsolved sexual assault case prior to the expiration of the statute
7 of limitations as set forth in Section 803, a victim of a violation
8 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
9 notification by the law enforcement agency of that intention.

10 (f) Written notification under subdivision (d) or (e) shall be
11 made at least 60 days prior to the destruction or disposal of the
12 rape kit evidence or other crime scene evidence from an unsolved
13 sexual assault case where the election not to analyze the DNA or
14 the destruction or disposal occurs prior to the expiration of the
15 statute of limitations specified in subdivision (g) of Section 803.

16 (g) A sexual assault victim may designate a sexual assault victim
17 advocate, or other support person of the victim's choosing, to act
18 as a recipient of the above information required to be provided by
19 this section.

20 (h) It is the intent of the Legislature that a law enforcement
21 agency responsible for providing information under subdivision
22 (c) do so in a timely manner and, upon request of the victim or the
23 victim's designee, advise the victim or the victim's designee of
24 any significant changes in the information of which the law
25 enforcement agency is aware. In order to be entitled to receive
26 notice under this section, the victim or the victim's designee shall
27 keep appropriate authorities informed of the name, address,
28 telephone number, and ~~electronic mail~~ *email* address of the person
29 to whom the information should be provided, and any changes of
30 the name, address, telephone number, and ~~electronic mail~~ *email*
31 address, if an ~~electronic mailing~~ *email* address is available.

32 (i) A defendant or person accused or convicted of a crime against
33 the victim shall have no standing to object to any failure to comply
34 with this section. The failure to provide a right or notice to a sexual
35 assault victim under this section may not be used by a defendant
36 to seek to have the conviction or sentence set aside.

37 (j) The sole civil or criminal remedy available to a sexual assault
38 victim for a law enforcement agency's failure to fulfill its
39 responsibilities under this section is standing to file a writ of
40 mandamus to require compliance with subdivision (d) or (e).

1 SEC. 2. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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